



FREEDOM FROM RELIGION FOUNDATION

P.O. Box 750 • Madison WI 53701 • (608) 256-8900 • www.ffrf.org

August 5, 2009

The Honorable Michael Nutter, Mayor
City Hall, Office of the Mayor, Room 215
Philadelphia, PA 19107

COPY

Ms. Anna Verna, Council President
City Hall, Room 405
Philadelphia, PA 19107-3290

Re: Invocations at City Council Meetings

Dear Mayor Nutter & President Verna:

I am writing on behalf of concerned Philadelphia residents and taxpayers and other Pennsylvania members of the Freedom From Religion Foundation (FFRF) to urge you to discontinue the practice of scheduling Philadelphia City Council meetings with prayers that unconstitutionally reference Christianity and invoke Jesus Christ. FFRF is a nationwide nonprofit organization, which works to protect the constitutional principle of separation of church and state. FFRF represents over 13,500 members across the country, including members in Pennsylvania.

It is our information and understanding that the Philadelphia City Council (hereinafter "Council") includes a prayer or invocation as part of its regular meetings. Our complainant informs us that it is the Council's practice to invite local members of the clergy to deliver these prayers.

Upon reviewing the prayers from January - June, 2009, it is clear that these prayers are rarely, if ever, non-denominational or non-sectarian. Please find enclosed transcriptions of prayers given at each meeting thus far in 2009. Jesus Christ was invoked in all but one of these prayers. Even more egregious is that on a few occasions, passages were taken directly from Scripture and on another occasion, the Lord's Prayer was recited. Specifically, a recent invocation given on April 16, 2009:

"Let us all pray. Oh, Lord, our Heavenly Father, who has brought us safely to this day, we pray for those who lead us in our City Council and in our City government. May you give them wisdom, discernment and courage to make decisions which are morally right. According to your word, you said acknowledge you in all our ways and you would direct our paths. You also promised to be a light and a lamp to those who trust and believe in you. Now, Lord, I humbly come to you on behalf of the citizens of our great city, the City

of Brotherly Love and Sisterly Affection, to ask you to be their counselor and guide as they make tough decisions that will affect all of us. And, dear God, in your word, you said for us not to be anxious for anything, but in all things, through prayer, supplication and with thanksgiving, make our request known unto you, and the God of peace that surpasses all understanding will guard our hearts and mind. We ask this in the ***name of our Lord and Jesus Christ, our savior. Amen.***" (emphasis added)

It is our further understanding that members of the public regularly attend Council meetings and have necessary business before the Council. Moreover, our complainant informs us that school-age children were invited and honored at City Council meetings for graduating and winning a state championship and, therefore, were subjected to these Christian-based prayers.

First and foremost, the prayers being offered before the Council's meetings do not fall into the narrow exception of constitutionally permissible government-sponsored prayer laid out by the Supreme Court. In *Marsh v. Chambers*, 463 U.S. 783 (1983), the Supreme Court ruled that the Nebraska legislature's history and tradition of opening with a prayer by a paid chaplain was constitutional. The exception found by the Court in this case was confined to a situation involving a non-sectarian, non-denominational prayer, led by an officiant who had not been selected based upon any impermissible religious motive, and which was addressed to the body of legislators present and no one else. *See Marsh*, 463 U.S. 783. Additionally, the Court held that legislators must have the option not to participate. The prayer opportunity must not be "exploited to proselytize or advance any one, or to disparage any other, faith, or belief." 463 U.S. at 794-95. The Court also noted that the content of the prayers was permissible because the chaplain has "removed all references to Christ." *Id.* at 793 n.14.

Even if the Council had an established history of opening its meetings with prayer, the practice still violates the Establishment Clause because of its continual references to Christ. In *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573, 603 (1989), the Supreme Court found that, even if history and custom had saved non-sectarian legislative prayer, "history cannot legitimate practices that demonstrate the government's allegiance to a particular sect or creed." Additionally, the Court reiterated, "not even the 'unique history' of legislative prayer, can justify contemporary legislative prayers that have the effect of affiliating the government with any one specific faith or belief." *Id.* The Court continued, "The legislative prayers involved in *Marsh* did not violate this principle because the particular chaplain had 'removed all references to Christ.'" *Id.*

Lower federal courts have ruled against government sponsored prayers that were sectarian, denominational and invoke a particular faith or deity. *See, e.g., Turner v. Fredericksburg*, 534 F.3d 352, 353 (4th Cir. 2008)(holding that prayers before city council meetings are government speech that must be non-denominational and non-sectarian); *Wynne v. Town of Great Falls*, 376 F.3d 292 (4th Cir. 2004)(holding that

the Establishment Clause was violated when the town council opened sessions with prayer containing references to Jesus Christ); *Coles ex rel. Coles v. Cleveland Bd. Of Educ.*, 171 F.3d 369 (6th Cir. 1999)(striking down school board's practice of opening meetings with prayer because the prayers contained repeated references to Jesus Christ and the Bible); *Snyder v. Murray City Corp.*, 159 F.3d 1227, 1234 (10th Cir. 1998)("...the kind of legislative prayer that will run afoul of the Constitution is one that proselytizes particular religious tenet or belief, or that aggressively advocates a specific religious creed, or that derogates another religious faith or doctrine.").

In *Wynne*, the Fourth Circuit held that any sectarian invocations of deities in legislative prayer are demonstrative of affiliating the government with a particular sect or creed and/or advancing a particular faith or belief. *See Wynne v. Town of Great Falls*, 376 F.3d 292. Additionally, both the presence and participation of town citizens were crucial to the court's determination that the Town Council had attempted to advance the Christian faith. *See id.* at 301. Ultimately, the court concluded,

"Marsh does not permit legislators to ... engage, as part of public business and for the citizenry as a whole, in prayers that contain explicit references to a deity in whose divinity only those of one faith believe. The invocations at issue here, which specifically call upon Jesus Christ, are simply not constitutionally acceptable legislative prayer like that approved in Marsh. Rather, they embody the precise kind of "advancement" of one particular religion that Marsh cautioned against." Id. (emphasis added).

Recently, the Supreme Court let stand another decision from the Fourth Circuit, which upheld a government policy requiring prayer before city council meetings to be non-denominational. In *Turner v. Fredericksburg*, 534 F.3d 352, 353 (4th Cir. 2008)(cert. denied, 2009 WL 56225 (U.S.)(No. 08-518), the Fourth Circuit held that prayers held at the city council meetings constituted government speech. Therefore, it was proper for the city council to prohibit sectarian prayers. *Id.* at 353. Justice O'Connor, writing for the court, stated, "[t]he restriction that prayers be nonsectarian in nature is designed to make the prayers accessible to the people who come from a variety of backgrounds, not to exclude or disparage a particular faith." *Id.* at 356.

The City Council of Philadelphia cannot, under current law, permit any prayers that contain references to an explicit deity. The prayers currently given during Council meetings impermissibly advance Christianity and lead a reasonable observer to believe that the Council is endorsing not only religion over non-religion, but also Christianity over other faiths. Even though the Council may be permitted to engage in invocations prior to its meetings, this opportunity does not provide "license to advance its own religious views in preference to all others..." *Wynne*, 376 F.3d 292.

Also raising grave Establishment Clause concerns is that school children in Philadelphia are sometimes subjected to these Christian-prayers. School children

who witness the prayers invoking Jesus Christ cannot possibly be able to discern that the Philadelphia City Council does not endorse the religious messages contained in the prayers or that the Council does not prefer Christianity over all other faiths.

Furthermore, this practice inappropriately alienates non-Christians and non-believers. Their efforts to participate in public meetings are adversely affected by these types of prayers, which turn non-believers and non-Christians into political outsiders of their own community and government. The constitutional rights of citizens to participate in government meetings such as the Council's monthly meetings should not be predicated upon being subjected to Christian-based prayers.

The Council's practice of having Christian-based prayers during its meetings is illegal. We urge you to discontinue this practice immediately and bring the Council back into compliance with constitutional dictates. We respectfully request a written reply addressing the steps you are taking to remedy this constitutional violation.

Sincerely,

A handwritten signature in black ink, appearing to read 'RSK', written over a horizontal line.

Rebecca S. Kratz
Staff Attorney

Enclosure

RSK:sas